

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

JAMES A. MAGGIO; TRADE RISK
MANAGEMENT, LLC (Washington); and
TRADE RISK MANAGEMENT, LLC
(Oregon),

Defendants.

CASE NO. C05-5766RJB

ORDER GRANTING MOTION
TO WITHDRAW AS COUNSEL

This matter comes before the Court on the defendants' Motion to Withdraw as Counsel (Dkt. 34). The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

According to the complaint, the defendants sell a stock market analysis service known as Sigma Band Charting through an internet website and materially misrepresent the risk and profit-making ability of the service. Dkt. 1 at 2. The complaint alleges that the defendants' conduct violates the Commodity Exchange Act ("the Act") and Commodities Futures Trading Commission regulations. *Id.* at 7.

On April 6, 2007, the plaintiff moved to compel production of "[a]ll documents relating or referring to any and all algorithms, or mathematical or statistical calculations, utilized to calculate

1 or to determine the 'Sigma Bands' referenced or described in any and all versions of the website
2 www.traderiskmanagement.com." Dkt. 28 at 1. The Court granted the motion but did not set a
3 time limit for compliance, recognizing the defendants' concern that compliance would lead to
4 disclosure of trade secrets and the plaintiff's apparent willingness to enter into a protective order.
5 Dkt. 33 at 3. The Court encouraged the parties to "work together to guard against the disclosure
6 of trade secrets and other proprietary information, meet and confer, attempt to resolve discovery
7 and scheduling issues in good faith, and use conference calls to chambers before filing further
8 discovery motions." *Id.*

9 Counsel for the defendants now moves to withdraw pursuant to Local Rule GR 2(g). Dkt.
10 34.

11 II. DISCUSSION

12 Withdrawal of attorneys is governed by Local Rule GR (2)(g):

13 (A) No attorney shall withdraw an appearance in any cause, civil or criminal,
14 except by leave of court. Leave shall be obtained by filing a motion or a
15 stipulation for withdrawal or, if appropriate, by complying with the requirement of
16 CrR 5(d)(2). A motion for withdrawal shall be noted in accordance with CR
17 7(d)(2) or CrR 12(c)(7) and shall include a certification that the motion was
served on the client and opposing counsel. A stipulation for withdrawal shall also
include a certification that it has been served upon the client. The attorney will
ordinarily be permitted to withdraw until sixty days before the discovery cut off
date in a civil case.

18 (B) If the attorney for a corporation is seeking to withdraw, the attorney shall
19 certify to the court that he or she has advised the corporation that it is required by
20 law to be represented by an attorney admitted to practice before this court and that
21 failure to obtain a replacement attorney by the date the withdrawal is effective
may result in the dismissal of the corporation's claims for failure to prosecute
and/or entry of default against the corporation as to any claims of other parties.

22 Local Rule GR(2)(g)(4).

23 The discovery deadline in this case is July 16, 2007. Dkt. 27. The motion does not
24 "include a certification that the motion was served on the client" as required by Local Rule GR
25 2(g)(4)(A). The motion is accompanied by a certification that Mr. Olbertz, counsel seeking to
26 withdraw, sent a notice to the defendant limited liability companies informing them of the
27 requirements of Local Rule GR 2(g)(4)(B). Dkt. 37. The notice is sufficient to put the defendants
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1 on notice as to Mr. Olbertz's desire to withdraw.

2 The plaintiff has responded to the motion and does not object to Mr. Olbertz's withdrawal
3 but does ask that the Court address various issues when deciding the motion. Specifically, the
4 plaintiff asks that the Court require compliance with the Court's Order Granting Plaintiff's
5 Motion to Compel (Dkt. 33). Dkt. 36 at 2. The plaintiff seeks production or a statement that the
6 defendants refuse to comply with the Order before the defendants' counsel is permitted to
7 withdraw. *Id.* Failure to comply with the Court's order may result in sanctions, as provided by the
8 Local and Federal Rules of Civil Procedure. *See, e.g.,* Local Rule GR 3(d); Fed. R. Civ. P. 37(b).
9 The Court's Order Granting Plaintiff's Motion to Compel (Dkt. 33) did not specify a time for
10 compliance in the hopes that the parties would work together to guard against disclosure of
11 confidential information. *See* Dkt. 33 at 3. Absent a specific directive, the defendants were
12 nevertheless required to comply with the Order forthwith and may incur sanctions for failure to do
13 so.

14 In addition, the plaintiff asks that the Court clarify that the withdrawal does not affect the
15 case schedule and require that any motion to change such schedule be made within ten days of the
16 withdrawal. Dkt. 36 at 2-3. The withdrawal of the defendants' counsel does not alter the case
17 schedule. It is unclear whether the defendants have found new counsel, and ten days may be an
18 insufficient length of time to become acquainted with the case and move the Court for relief from
19 deadlines. The Court should therefore decline to require motions to change the case schedule, if
20 any, to be filed within ten days. The parties are cautioned that any delay in requesting a
21 modification of the case schedule may impact the Court's willingness to modify deadlines in this
22 case.

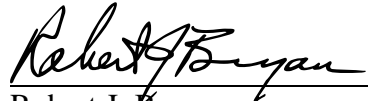
23 III. ORDER

24 Therefore, it is hereby

25 **ORDERED** that the defendants' Motion to Withdraw as Counsel (Dkt. 34) is
26 **GRANTED.**

1 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel
2 of record and to any party appearing *pro se* at said party's last known address.

3 DATED this 31st day of May, 2007.

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6 Robert J. Bryan
United States District Judge